IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

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WRIT PETITION No. 32848 of 1998

Between:

Mohd.Esamiyan, S/o Baji Saheb,

Aged 45 years, Occ: Driver,

E.No.79445 APSRTC Madhapur,

Via Nirmal Mandal, Adilabad District.

..... PETITIONER

AND

1. APSRTC rep. by its Regional Manager,

Adilabad.

2. APSRTC rep. by its Deputy Chief Traffic

Manager, Adilabad.

3. APSRTC rep. by its Depot Manager,

Nirmal Depot.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction particularly one in the nature of Writ of Mandamus declaring the Proceedings No.19(40)/RM/ADB dated 27-8-1998 reinstating the petitioner into service afresh by denying insofar as continuity of service, attendant benefits, and back wages as arbitrary, illegal, unjust, contrary to law, violation of

principles of natural justice on the basis of perverse findings, victimization, unfair labour practice and also in violation of Articles 14,16 and 21 of the Constitution of India; consequently, to direct the respondents to reinstate the petitioner into service with continuity of service, attendant benefits, back wages in the interest of justice.

Counsel for the Petitioner: Mr.P.SRIDHAR RAO

Counsel for the Respondents: Ms.G.JYOTHI KIRAN, SC for APSRTC

The Court made the following :

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JUDGMENT:

This is a very unfortunate case where the petitioner was meted out with injustice for no fault of him.

According to the petitioner, he was appointed as a Driver with effect from 8-2-1979 in the respondent-Corporation and he was attached to the Andhra Pradesh State Road Transport Corporation Bus Depot at Adilabad. While so, by Proceedings dated 27-8-1997, he was transferred from Adilabad to Nirmal depot. Since he was sick, he applied for leave from 1-9-1997 and submitted a sick certificate and discharge certificate for the period from 1-9-1997 to 3-10-1997 and reported at Adilabad Depot. Thereupon, he was informed by the Depot Manager, Adilabad that he was relieved with effect from 15-9-1997 and the Musters have been sent to the Depot Manager, Nirmal – 3rd respondent herein. Therefore, he went and reported before the 3rd respondent. However, the 3rd respondent did not allow him to join duty stating that unless his muster and other connected records were received, the petitioner will not be permitted to join duty. In this regard, the 3rd respondent, in fact, sent a letter dated 30-9-1997 to the Depot Manager, Adilabad and gave a copy of the same to him asking to bring muster and relieving letter. The Depot Manager, Adilabad addressed a letter to the 3rd respondent on 17-11-1997 stating that the muster of the petitioner and other connected records were already sent to the 3rd respondent on 31-10-1997 and a xerox copy of the said letter was handed over to him; in turn, he submitted the said letter dated 31-10-1997 to the 3rd respondent. In spite of that, he was not taken on duty. Ultimately, a charge sheet was issued by the 3rd respondent on 27-1-1998 asking him to explain as to why disciplinary proceedings should not be initiated against him for having absented unauthorizedly for duty from 16-9-1997 to 27-1-

1998. He submitted a detailed explanation stating as under:

> "I submit that as per Order No.E2/873(1)/97, dt.27-8-97 I was transferred from Adilabad depot to Nirmal depot and I was relieved to effect the transfer on 15-9-97.
>
> I submit that since I was under sick, hence reported at Adilabad depot duly giving the discharge certificate to fit for duty on 4-10-97.
>
> I submit since my muster was closed and sent to Nirmal Depot on 15-9-97 vide DM/ADB Lr.No.P3/813(1)/97-ADB dt.15-9-97 hence, accordingly, I have reported on duty at Nirmal Depot, but I was not taken on duty alleging that, my muster and other connected record was not received at Nirmal Depot. As such, I was given a letter bearing No.P1/813(Gen)/97 NRML dt.31-9-97 to bring the muster and relieving letter from Adilabad Depot.
>
> I submit that the kind DM/Adilabad given me a letter addressed to you No.P3/813(1)/97 dt.12-11-97 stating that my muster and other connected papers were already sent vide Lr.No.P1/813(Gen)/97 dt.31-10-97 but, however, Xerox copy of the muster and relieving letter were given to me which has already been handed over in this office.
>
> I submit since 4-10-97 I am not being taken on duty even after handing over the duplicate copy of the Muster and relieving letter. The reason for the same not known to me.
>
> I am a poor person since October 97 to till date I am not getting the salary. The concerned persons are harassing me. May please be taken up.
>
> Therefore, I request my kind officer to be kind on me and be kind to take me on duty by dropping the charge sheet in the light of my explanation which is true, for which I shall be grateful."

After considering the above explanation and conducting a detailed enquiry into the matter, the 3rd respondent herein passed final orders dated 20-3-1998 removing him from service. Aggrieved by the same, he filed an appeal before the Deputy Chief Traffic Manager, Adilabad, 2nd respondent herein, which was rejected by an Order dated 13-7-1998. Further, he filed an appeal/review petition before the 1st respondent-Regional Manager. The 1st respondent by an Order dated 27-8-1998 having considered 18 long years service of the petitioner, took a lenient view of the matter and directed his reinstatement as a fresh Driver Grade-II under Regulation 17 of the APSRTC Employees (Recruitment) Regulations,1967 and to consider his past service only for terminal benefits. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner, at the outset, submits that the course of directing fresh appointment in a departmental appeal/review is not available, since such a punishment is not contemplated under the APSRTC Employees (CCA) Regulations. Further, absolutely, there was no fault on the part of the petitioner and he was shuttling between Depot Manager, Adilabad and the 3rd respondent. Letter dated 31-10-1997 and the letter dated 12-11-1997 of the Depot Manager, Adilabad would make it clear that the petitioner was not allowed to join duty on the pretext that his relieving orders were not received by the 3rd respondent from the 1st respondent and the 3rd respondent addressed letters to the Depot Manager, Adilabad and the Depot Manager, Adilabad in turn addressed letters to the 3rd respondent as to this fact. Therefore, there was no reason to pass an order of removal from service against the petitioner. The appellate/reviewing authority also has not properly considered the matter and denied the entire 18 years of service of the petitioner, which will not be counted for the purpose of promotion etc. Further, the letter dated 16-12-1997 purported to have been written by the 3rd respondent advising the Chief Inspector, Nirmal to take him on duty, but the petitioner did not join was not correct. There is no mention as to on what date the said order was served on the petitioner. In fact, the petitioner waited and waited and ultimately, he received only the charge sheet, which resulted in his removal from service, which is arbitrary and illegal.

Though counter affidavit is not filed, on the basis of the para-wise remarks, the learned Standing Counsel for APSRTC submits that the petitioner was transferred from Adilabad to Nirmal Depot on his own request and he was relieved on 15-9-1997 at Adilabad. If it is a fact, he was sick and reported for duty at Adilabad Depot on 6-10-1997 with discharge and fitness certificate and when informed that his muster was closed and sent to the 3rd respondent, he should have obtained a copy of the relieving letter from the Depot Manger, Adilabad to report for duty at Nirmal, which he failed to do so. The contention that he reported for duty at Adilabad on 6-10-1997 is self-contradictory as he stated during the enquiry that he was fit for duty from 4-10-1997. Therefore, the contention that the petitioner was not permitted to discharge his duties is not correct, because he was directed for duty by the 3rd respondent on 16-12-1997 advising the Chief Inspector, Nirmal to take him on duty, but he did not report for duty. The appellate/reviewing authority, in fact, took a lenient view of the matter and he was reinstated into service and such an order cannot be

interfered with by this Court while exercising its powers under Article 226 of the Constitution of India.

From the above facts, one thing is clear that the Depot Manager, Nirmal – 3rd respondent – had written a letter on 31-10-1997 to the Depot Manager, Adilabad wherein it was stated that to effect the transfer of the petitioner to Nirmal he was relieved on 15-9-1997 at Adilabad, but his musters and directing letter were not received in his office till 31-10-1997 and requested the Depot Manager, Adilabad to send the same for taking further action. In reply, the Depot Manager, Adilabad addressed letter dated 17-11-1997 stating that the petitioner was already relieved vide letter dated 31-10-1997 and the same was despatched to the Depot Manager, Nirmal with his musters etc. However, a Xerox copy of the directing letter and duplicate muster of the petitioner were enclosed for further action at his end. May be, the 3rd respondent advised the Chief Inspector, Nirmal to take the petitioner on duty. But, there was no communication sent to the petitioner even according to the para-wise remarks. Thus, the petitioner was not permitted to join duty for a long time and thereafter, he received the charge sheet, which can only be said as unreasonable. There was no fault on the part of the petitioner. May be, the petitioner was not in day-to-day touch with the 3rd respondent for the purpose getting joining orders.

I have looked into the Enquiry Officer's report. From day one onwards, the petitioner has been saying that he was sick and reported to duty on 4-10-1997 at Adilabad and he was asked to go to Nirmal Depot and when he went to Nirmal Depot, he was not permitted to join duty on the pretext that his musters and relieving orders were not received by the 3rd respondent from the Depot Manager, Adilabad. This is abundantly evident from the letters dated 31-10-1997, 17-11-1997 and the purported advise of the 3rd respondent dated 16-12-1997. Assuming that there was some lapse on the part of the petitioner in reporting for duty that itself does not mean that he was unauthorizedly absent from his duty wantonly for the entire period as alleged by the management and while reinstating him into service afresh denying the entire service of 18 years for the purpose of seniority etc., by the reviewing authority – 1st respondent - is shockingly disproportionate to that of the misconduct purported to have been proved against the petitioner. Instead of sending the matter back for reconsideration at this length of time, I am of the opinion that it would be just and

proper to direct the respondents to reinstate the petitioner with continuity of service, but without any back wages and without any attendant benefits. Therefore, the order impugned is modified to the following effect:

> "The petitioner is entitled for reinstatement with continuity of service, but without back wages and without any attendant benefits including increments etc."

Accordingly, the writ petition is disposed of. No costs.

13th August, 2004

Prk

SPECIAL OFFICER

// TRUE COPY //

SECTION OFFICER

To

1. The Regional Manager, APSRTC,

Adilabad.

2. The Deputy Chief Traffic

Manager, APSRTC, Adilabad.

3. The Depot Manager, APSRTC,

Nirmal Depot.

4. 2CD copies